Supreme Court, U.S.
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No.

IN THE
SUPREME COURT of the UNITED STATES

Doris Isbell, Petitioner

v.

Allstate Insurance Company, Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether it is illegal retaliation under Age Discrimination in Employment Act, 29 USC §623(d); Title VII of the Civil Rights Act of 1964, as amended, 42 USC §2000e-3(a); and the Americans with Disabilities Act, 42 USC §12203 for an employer to condition rehire or continuing employment, albeit in a different position, on an employee's execution of a release and waiver of rights to engage in protected activity.

PARTIES TO THE PROCEEDINGS

Petitioner is Doris Isbell.

Respondent is Allstate Insurance Company ("Allstate").

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PETITION FOR WRIT OF CERTIORARI

Petitioner Doris Isbell respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit in this case.

OPINIONS BELOW

The opinion of the Court of Appeals is reported as *Isbell v. Allstate Insurance Company*, 418 F.3d 788 (7th Cir. 2005). It is reproduced in the Appendix at App. 1. The orders of the District Court denying petitioner's motion for partial summary judgment, granting respondent's cross-motion for partial summary judgment and denying petitioner's motion for reconsideration are unreported and are reproduced in the Appendix at App. 47, 47, 16.

JURISDICTION

The court of appeals judgment was entered on August 15, 2005. App. 1. A timely petition for rehearing was denied

on October 11, 2005. App. 72. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

1. Age Discrimination in Employment Act, 29 USC §623(d) ("ADEA"), provides: Opposition to unlawful practices; participation in investigations, proceedings, or litigation. It shall be unlawful for an employer to discriminate against any of his employees or applicants for employment, for an employment agency to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because such individual, member or applicant for membership has opposed any practice made unlawful by this section, or because such individual, member or applicant for membership has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or litigation under this Act.

2. Title VII of the Civil Rights Act of 1964, as amended, 42 USC §2000e-3(a) ("Title VII") provides: It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment . . . because [s]he has opposed any practice made an unlawful employment practice by this subchapter, or because [s]he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under this subchapter.

3. Americans with Disabilities Act, 42 USC §12203 ("ADA") provides: (a) Retaliation. No person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this Act or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Act.

(b) Interference, coercion, or intimidation. It shall be

unlawful to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this Act.

4. Older Workers Benefits Protection Act of 1990, 29 USC §626(f)(4) provides: ....No waiver may be used to justify interfering with the protected right of an employee to file a charge or participate in an investigation or proceeding conducted by the Commission.

STATEMENT OF THE CASE

Petitioner Doris Isbell seeks review of the ruling of the Seventh Circuit Court of Appeals which held an employer can condition rehire or continued employment, albeit in a different position, on the employee's agreement to refrain from protected activity.

Petitioner seeks review of the Seventh Circuit's ruling because it is in conflict with the rulings of this Court and other Courts of Appeal that have interpreted anti-retaliation provisions of the ADEA, Title VII, and the ADA and is contrary to the plain language of the OWBPA. Petitioner also seeks review of the ruling below because it is in conflict with and undermines this Court's decision *Hishon v. Spalding*.

The petition arises out of an action brought by Doris Isbell for violation of her rights including illegal retaliation under ADEA, Title VII, and ADA. Jurisdiction of the District Court was properly invoked pursuant to 28 U.S.C. §§ 1331 and 1343(a)(4); 29 U.S.C. § 626(c), (f)(3); 42 U.S.C. §2000(e)-5; 42 U.S.C. § 12117(a); and 20 U.S.C. §1132(e)(1) and (f).

After a fifteen year career at Allstate Doris Isbell, age 51, was required to convert from an employee to an

independent contractor position or leave the company. Significantly, the condition for staying with Allstate as an independent contractor was that she must sign an agreement not to engage in protected activity under ADEA, Title VII, and ADA as well as ERISA. The agreement was Allstate's Election Form Release and General Waiver ("release").

In effect, Ms. Isbell was required to agree to refrain from engaging in protected activity in order to keep a job with Allstate. There were no other requirements for conversion to independent contractor. Ms. Isbell refused to sign the release and was not allowed to convert to the independent contractor job.

During her tenure at Allstate Ms. Isbell worked as what was known as an employee agent. Prior to June 30, 2000 Allstate had two categories of agents: employee insurance agents employed under one of two contracts known as R830 and R1500 and exclusive agents who operated as independent contractors under an agreement called R3000 or R3001. Ms. Isbell worked as what was known as an employee agent under the R1500 contract. She received a base salary plus commissions and benefits to sell insurance policies in a territory in southern Illinois.

Beginning sometime in the mid 1990s Ms. Isbell's manager made clear to her she had the option to convert to an exclusive agent; her manager said the option was available to her at any time. Ms. Isbell was not during that time required to sign a release of any of her rights under any civil rights statute as a prerequisite to conversion. She was not at that time required to refrain from engaging in protected activity if she chose to convert to independent contractor. And, Ms. Isbell's manager explained to her if she converted to independent contractor, she would continue to work in the same office and handle the same customers; he told her she would continue her job as she had but the compensation and payment of office expenses would be different.

Then in November, 1999 Allstate announced a program to eliminate all of its approximately 6,400 employee

agents including Ms. Isbell. Under this program these employees were required effective June 30, 2000 to convert to independent contractors known as exclusive agents or leave Allstate; as the only prerequisite to this forced conversion, these employees were told they must execute Allstate's release. Allstate stated in its description of the program, "the terminated agent could become an independent contractor...without meeting various requirements and restrictions imposed earlier by Allstate"; the only requirement was execution of the release.

Prior to June 30, 2000, while Ms. Isbell was still working as an employee agent, Allstate sent her letter after letter indicating she could not work as an exclusive agent unless she signed the release. On May 24, 2000 after receipt of two such letters, Ms. Isbell responded she did not intend to sign the release, that she did not want to forfeit her rights to bring claims; she added she wanted, however, to work for Allstate as an exclusive agent. By way of response Allstate advised her she could not work as an exclusive agent unless she signed the release. The only obstacle to her employment as an exclusive agent was her refusal to sign the release. Ms. Isbell then responded in a May 26, 2000 letter to her manager that, in effect, she believed the required conversion to independent contractor constituted age discrimination and retaliation.

Though Ms. Isbell was willing to work as an exclusive agent, she had concerns about whether the forced conversion program constituted age discrimination. She also did not believe she should be required to agree to refrain from engaging in protected activity to keep her career at Allstate. She could not continue her career at Allstate and work as an exclusive agent and challenge even the legality of the conversion program itself. Ms. Isbell thus refused to sign the release and filed her Charge of Discrimination with the EEOC on May 26, 2000, charging Allstate's conversion program violated the ADEA and was retaliatory in violation not only of the ADEA but also Title VII and ADA.